

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4308 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GUJARAT STATE RAOD TRANSPORT

Versus

DINKARRAI DHIRAJLAL BHATT

Appearance:

MR NV ANJARIA for the Petitioner

None present for the respondent.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/08/96

ORAL JUDGEMENT

1. Heard learned counsel for the petitioner. The respondent workman, a bus conductor at the Junagadh Division of the Corporation, was dismissed from the services after holding departmental inquiry. The charge against him was that though he had recovered from ten women passengers fare for the journey between Madhwad to Kotada, but had not issued the tickets to them.

2. An industrial dispute has been raised by the

workman which has been referred to the Labour court. The dismissal of the petitioner was made on 17th October, 1977 and the dispute has been raised in the year 1982. Under the award impugned in this Special Civil Application, the workman was ordered to be reinstated back in the service by considering the penalty of dismissal to be harsh and excessive, but the workman was not given the backwages.

3. The learned counsel for the petitioner contended that the Tribunal has committed serious illegality in interfering with the penalty given to the workman concerned by the disciplinary authority. This is a serious case where the respondent had not issued the tickets to the passengers though amount had been recovered from them, and as such, the Corporation was put to financial loss, and so no lenient view should have been taken.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner. The learned Tribunal has after considering some of the authorities of this Court interfered with the punishment treating it to be a case of disproportionate or excessive penalty. Under sec. 11A of the Industrial Disputes Act, 1947, the Tribunal has a power to go on the question of the appropriate penalty to be given to the workman concerned on a proved misconduct. It is not a case where the Tribunal was not conscious of the fact that it is a case of misconduct. Though the penalty of dismissal was held excessive, but only reinstatement was ordered and the respondent was not given any backwages. The dismissal was of the year 1977 and the award has been made in the year 1983. So the Tribunal has not given to the respondent the backwages for six years, which is more than sufficient penalty. It is not the case of the petitioner before the Labour Court that the respondent was in gainful employment and as such, he was not entitled for the backwages. In the absence of that pleadings and proof and the finding of the Labour Court, it cannot be said that the backwages have not been granted for the reason that the respondent workman was gainfully employed elsewhere during that period. The backwages were not allowed as the Tribunal considered it to be a case of misconduct. Though I find some merit in the contention of the learned counsel for the petitioner that some penalty should have been given as provided in the standing order which has not been done in the present case. But on this ground no interference is called for in this case for the reasons (i) that the backwages have not been awarded and (ii) the workman has been reinstated

in the service and it is not the case of the petitioner that after his reinstatement he has committed any other misconduct.

5. Taking into consideration the totality of the facts of this case, I do not consider it to be a case where this Court should interfere with the award made by the Labour Court.

6. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged with no order as to costs.

zgs/-